



GENERAL ASSEMBLY

COMMONWEALTH OF KENTUCKY

2016 REGULAR SESSION

HOUSE BILL NO. 562

AS ENACTED

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ALISON LUNDERGREN GRIMES
SECRETARY OF STATE
COMMONWEALTH OF KENTUCKY
BY R. Adler

1 AN ACT relating to medical services and making an appropriation therefor.

2 ***Be it enacted by the General Assembly of the Commonwealth of Kentucky:***

3 ➔Section 1. KRS 315.510 is repealed, reenacted as a new section of KRS Chapter
4 309, and amended to read as follows:

5 **Sections 1 to 12 of this Act**~~[KRS 315.510 to 315.524]~~ shall be known and may be cited
6 as the Home Medical Equipment and Services Provider Licensure Act.

7 ➔Section 2. KRS 315.512 is repealed, reenacted as a new section of KRS Chapter
8 309, and amended to read as follows:

9 As used in **Sections 1 to 12 of this Act**~~[KRS 315.510 to 315.524]~~, unless the context
10 requires otherwise:

11 (1) "Applicant" means a person who applies **to the board** for licensure~~[by the board]~~ as
12 a home medical equipment and services provider;

13 (2) "Board" means the **Kentucky Board of Durable Medical Equipment**
14 **Suppliers**~~[Kentucky Board of Pharmacy]~~ established in **Section 11 of this Act**~~[KRS~~
15 ~~315.150]~~;

16 (3) "Home medical equipment" means durable medical equipment which:

- 17 (a) Withstands repeated use;
- 18 (b) Is primarily and customarily used to serve a medical purpose;
- 19 (c) Is generally not useful to a person in the absence of illness or injury; and
- 20 (d) Is appropriate for use in the home;

21 (4) "Providing home medical equipment and services" means the sale, lease, rental,
22 delivery, installation, maintenance, replacement, or instruction in the use of home
23 medical equipment, related equipment and supplies, and mobility enhancing
24 equipment used by a sick or disabled person to allow the person to be maintained in
25 his or her residence and which is funded through a third-party payor;

26 (5) "Home medical equipment and services provider" or "provider" means a person
27 engaged in the business of providing home medical equipment and services, either

1 directly or through a contractual arrangement, to an unrelated sick or disabled
 2 person in the residence of that person; and

3 (6) "Person" has the same meaning as in KRS 446.010.

4 ➔Section 3. KRS 315.514 is repealed, reenacted as a new section of KRS Chapter
 5 309, and amended to read as follows:

6 (1) No person shall provide home medical equipment and services, or use the title
 7 "home medical equipment and services provider" in connection with his or her
 8 profession or business, without a license issued by the board.

9 (2) Unless home medical equipment and services are provided through a separate legal
 10 entity, nothing in Sections 1 to 12 of this Act~~[KRS 315.510 to 315.524]~~ or any
 11 administrative regulations promulgated thereunder shall be construed as preventing
 12 or restricting the practices, services, or activities of the following:

13 (a) A person licensed or registered in this state under any other law who is
 14 engaging in the profession or occupation for which he or she is licensed or
 15 registered;

16 (b) Health care practitioners who lawfully prescribe or order home medical
 17 equipment and services, or who use home medical equipment and services to
 18 treat their patients;

19 (c) Home health agencies that do not engage in the provision of home medical
 20 equipment and services;

21 (d) Hospitals that provide home medical equipment and services only as an
 22 integral part of patient care;

23 (e) Manufacturers and wholesale distributors of home medical equipment who do
 24 not sell, lease, or rent home medical equipment directly to a patient;

25 (f) Pharmacies that are engaged in the sale, lease, or rental of home medical
 26 equipment and services;

27 (g) An employee of a person licensed under Sections 1 to 12 of this Act~~[KRS~~

1 ~~315.510 to 315.524~~];

2 (h) Hospice programs that do not involve the sale, lease, or rental of home
3 medical equipment and services;

4 (i) Skilled nursing facilities that do not involve the sale, lease, or rental of home
5 medical equipment and services;

6 (j) Government agencies, including fire districts which provide emergency
7 medical services; and

8 (k) Notwithstanding subsection (1) of this section, an out-of-state provider whose
9 primary business is the manufacture, distribution, or both, of highly
10 specialized equipment who ships that equipment into this state if that
11 equipment is not provided by a licensed Kentucky home medical equipment
12 and services provider.

13 ➔Section 4. KRS 315.516 is repealed, reenacted as a new section of KRS Chapter
14 309, and amended to read as follows:

15 A person licensed under Sections 1 to 12 of this Act~~[KRS 315.510 to 315.524]~~ shall
16 provide home medical equipment and services that carry a legend or require an order
17 from a licensed health care practitioner.

18 ➔Section 5. KRS 315.518 is repealed, reenacted as a new section of KRS Chapter
19 309, and amended to read as follows:

20 (1) A home medical equipment and services provider shall be licensed by the board~~[~~
21 ~~under KRS 315.510 to 315.524]~~ prior to engaging in providing home medical
22 equipment and services in the Commonwealth. Each license application shall be
23 accompanied by a reasonable fee prescribed by administrative regulation not to
24 exceed three hundred fifty dollars (\$350)~~[two hundred dollars (\$200)]~~ initially
25 every two (2) years~~[per year]~~ or increase more than twenty-five dollars (\$25) per
26 biennium~~[year]~~ up to a maximum of four hundred dollars (\$400). Upon receipt of
27 an application for a license to operate as a home medical equipment and services

1 provider, the board shall issue a license if the provider meets the standards and
 2 requirements of this section or Section 7 of this Act~~[chapter]~~ and the administrative
 3 regulations of the board.

4 (2) Home medical equipment and services providers shall be required to maintain
 5 adequate records of all home medical equipment and services provided as
 6 established by administrative regulation by the board. Records shall be made
 7 available to agents of the board for inspection at reasonable times. The board may
 8 require by administrative regulation that home medical equipment and services
 9 providers periodically report to the board all home medical equipment and services
 10 provided.

11 (3) Failure to report to the board or willful submission of inaccurate information shall
 12 be grounds for disciplinary action under Section 8 of this Act~~[KRS 315.121]~~.

13 (4) The board shall promulgate an administrative regulation pursuant to KRS Chapter
 14 13A to specify the criteria for licensure.

15 (5) Pursuant to KRS 61.878, information provided by an applicant under this section
 16 and any related administrative regulation shall not be disclosed to any person or
 17 entity other than the board.

18 ➔Section 6. KRS 315.520 is repealed, reenacted as a new section of KRS Chapter
 19 309, and amended to read as follows:

20 (1) The board shall refuse to renew any license to operate unless the home medical
 21 equipment and services provider meets the standards and requirements of Sections
 22 1 to 12 of this Act~~[KRS 315.510 to 315.524]~~ and the administrative regulations of
 23 the board. The board shall act upon an application for a license within thirty (30)
 24 days after the receipt thereof.

25 (2) A separate license shall be required for each location of a home medical equipment
 26 and services provider.

27 (3) A home medical equipment and services provider shall display its license at its

1 place of business.

2 (4) Each license as a home medical equipment and services provider, unless sooner
 3 suspended or revoked, shall expire on September 30 two (2) years following its date
 4 of issuance and be renewable every two (2) years~~[annually]~~ thereafter upon proper
 5 application accompanied by a~~[such]~~ reasonable renewal fee as may be set by
 6 administrative regulation of the board, not to exceed three hundred fifty dollars
 7 (\$350)~~[two hundred dollars (\$200)]~~ initially per biennium or~~[year nor to]~~ increase
 8 more than twenty-five dollars (\$25) per biennium~~[year]~~ up to a maximum of four
 9 hundred dollars (\$400). An additional fee not to exceed the biennial~~[annual]~~
 10 renewal fee may be assessed and set by administrative regulation as a delinquent
 11 renewal penalty for failure to renew by September 30 of each biennium~~[year]~~.

12 (5) Licenses to operate shall be issued only for the premises and persons named in the
 13 application and shall not be transferable.

14 ➔Section 7. KRS 315.522 is repealed, reenacted as a new section of KRS Chapter
 15 309, and amended to read as follows:

16 (1) (a) The board may grant a license on the basis of reciprocity to a home medical
 17 equipment and services provider located in one (1) of Kentucky's seven (7)
 18 contiguous bordering states that licenses home medical equipment and
 19 services providers if:

20 1. The out-of-state provider physically located in one (1) of Kentucky's
 21 seven (7) contiguous bordering states possesses a valid license from a
 22 jurisdiction that grants the same privileges to persons licensed by the
 23 Commonwealth as the Commonwealth grants to persons licensed by the
 24 other jurisdiction;

25 2. The requirements for licensure in the contiguous bordering state,
 26 including but not limited to a requirement for a physical location in the
 27 state as a condition of issuing or renewing a license, are substantially

1 similar to the requirements under Sections 1 to 12 of this Act~~[KRS~~
 2 ~~315.510 to 315.524]~~; and

3 3. The out-of-state provider seeking licensure states that he or she has
 4 studied, is familiar with, and shall abide by Sections 1 to 12 of this
 5 Act~~[KRS 315.510 to 315.524]~~ and the administrative regulations
 6 promulgated thereunder.

7 (b) 1. Notwithstanding subsection (2) of this section, the board may grant a
 8 license on the basis of reciprocity to a home medical equipment and
 9 services provider physically located in one (1) of Kentucky's seven (7)
 10 contiguous bordering states that does not license home medical
 11 equipment and services providers if the out-of-state provider seeking to
 12 operate in Kentucky states by affidavit that he or she has studied, is
 13 familiar with, and shall abide by Sections 1 to 12 of this Act~~[KRS~~
 14 ~~315.510 to 315.524]~~ and the administrative regulations promulgated
 15 thereunder; and

16 2. The contiguous bordering state grants the same privileges to persons
 17 licensed in the Commonwealth as the Commonwealth grants to
 18 providers from the state described in subparagraph 1. of this paragraph.

19 (2) If the requirements for licensure under Sections 1 to 12 of this Act~~[KRS 315.510 to~~
 20 ~~315.524]~~ and the administrative regulations promulgated thereunder are more
 21 restrictive than the standards of a contiguous jurisdiction, then the out-of-state
 22 provider shall comply with the additional requirements of Sections 1 to 12 of this
 23 Act~~[KRS 315.510 to 315.524]~~ to obtain a reciprocal license.

24 ➔SECTION 8. A NEW SECTION OF KRS CHAPTER 309 IS CREATED TO
 25 READ AS FOLLOWS:

26 (1) The board shall refuse to license, or shall suspend a license, if the person seeking
 27 or holding a license has ever been convicted of or entered an Alford plea or plea

1 of nolo contendere to a sex crime as defined in KRS 17.500, a criminal offense
 2 against a victim who is a minor as defined in KRS 17.500, a felony offense under
 3 KRS Chapter 209, or an offense which would classify the person as a violent
 4 offender under KRS 439.3401.

5 (2) The board may refuse to issue or renew a license, or may suspend, temporarily
 6 suspend, revoke, fine, place on probation, reprimand, reasonably restrict, or take
 7 any combination of these actions against any licensee, for the following reasons:

8 (a) Unprofessional or unethical conduct;

9 (b) Mental or physical incapacity that prevents the licensee from engaging or
 10 assisting in the provision of home medical equipment and services with
 11 reasonable skill, competence, and safety to the public;

12 (c) Being convicted of or entering an Alford plea or plea of nolo contendere to,
 13 irrespective of an order granting probation or suspending imposition of any
 14 sentence imposed following the conviction or entry of such plea, one (1) or
 15 more or the following:

16 1. A felony;

17 2. An act involving gross immorality; or

18 3. A violation of the home medical equipment laws, rules, or
 19 administrative regulations of this state, any other state, or the federal
 20 government;

21 (d) Knowing or having reason to know that a home medical equipment and
 22 services provider is incapable of engaging or assisting in the practice of
 23 providing home medical equipment and services with reasonable skill,
 24 competence, and safety to the public and failing to report any relevant
 25 information to the board;

26 (e) Knowingly making or causing to be made any false, fraudulent, or forged
 27 statement or misrepresentation of a material fact in securing issuance or

1 renewal of a license;

2 (f) Engaging in fraud in connection with the practice of the provision of home
3 medical equipment and services;

4 (g) Engaging in or aiding and abetting an individual to engage or assist in the
5 provision of home medical equipment and services without a license or
6 falsely using the title "home medical equipment and services provider,"
7 "provider," or other term which might imply that the individual is a home
8 medical equipment and services provider; or

9 (h) Violation of any order issued by the board to comply with any applicable
10 law or administrative regulation.

11 (3) As used in this section, "unprofessional or unethical conduct" includes but is not
12 limited to the following acts of a home medical equipment and services provider:

13 (a) Engaging in conduct likely to deceive, defraud, or harm the public,
14 demonstrating a willful or careless disregard for the health, welfare, or
15 safety of a sick or disabled person, or engaging in conduct which
16 substantially departs from accepted standards of providing home medical
17 equipment and services ordinarily exercised by a home medical equipment
18 and services provider, with or without established proof of actual injury;

19 (b) Engaging in grossly negligent professional conduct, with or without
20 established proof of actual injury;

21 (c) Obtaining any remuneration by fraud, misrepresentation, or deception;

22 (d) Providing home medical equipment and services that carry a legend or
23 require a prescription without a medical order from a licensed health care
24 practitioner; or

25 (e) Willfully or knowingly failing to maintain complete and accurate records of
26 home medical equipment and services provided in compliance with federal
27 and state laws, rules, or administrative regulations.

- 1 (4) Any licensee who is found guilty of or enters an Alford plea or plea of nolo
 2 contendre to a violation prescribed in subsection (1) or (2)(c) of this section shall,
 3 within thirty (30) days, notify the board of that conviction or plea. Failure to do
 4 so shall be grounds for suspension or revocation of the license.
- 5 (5) Any person whose license has been revoked in accordance with this section, other
 6 than a person whose license was revoked for being convicted of or entering an
 7 Alford plea or plea of nolo contendere to a sex crime as defined in KRS 17.500, a
 8 criminal offense against a victim who is a minor as defined in KRS 17.500, a
 9 felony offense under KRS Chapter 209, or an offense which would classify the
 10 person as a violent offender under KRS 439.3401, may petition the board for
 11 reinstatement. The petition shall be made in writing and in a form prescribed by
 12 the board. The board shall investigate all reinstatement petitions, and may
 13 reinstate a license upon a showing that the former holder has been rehabilitated
 14 and is again able to engage in the practice of providing home medical equipment
 15 and services with reasonable skill, competency, and safety to the public.
 16 Reinstatement may be on the terms and conditions that the board, based on
 17 competent evidence, reasonably believes necessary to protect the health and
 18 welfare of the citizens of the Commonwealth.
- 19 (6) Upon exercising the power of revocation provided for in subsection (2) of this
 20 section, the board may reasonably prohibit any petition for reinstatement for a
 21 period up to and including five (5) years.
- 22 (7) (a) A licensee who is disciplined under this section for a minor violation may
 23 request in writing that the board expunge the minor violation from the
 24 licensee's permanent record.
- 25 (b) The request for expungement may be filed no sooner than three (3) years
 26 after the date on which the licensee has completed disciplinary sanctions
 27 imposed and if the licensee has not been disciplined for any subsequent

violation of the same nature within this period of time.

(c) A person shall not have his or her record expunged under this section more than once.

(d) The board shall promulgate administrative regulations in accordance with KRS Chapter 13A to establish what are considered minor violations under this subsection. A violation shall be deemed a minor violation if it does not:

1. Demonstrate a serious inability to practice the profession;
2. Involve the provisions of home medical equipment and services;
3. Adversely affect the public health, safety, or welfare;
4. Result in economic or physical harm to a person; or
5. Create a significant threat of such harm.

➔SECTION 9. A NEW SECTION OF KRS CHAPTER 309 IS CREATED TO READ AS FOLLOWS:

(1) The board may:

(a) Promulgate administrative regulations in accordance with KRS Chapter 13A necessary to regulate and control all matters set forth in Sections 1 to 12 of this Act relating to manufacturers and wholesale distributors of home medical equipment and home medical equipment and services providers in this state, to the extent that regulation and control has not been delegated to some other agency of the Commonwealth, provided that:

1. Administrative regulations relating to home medical equipment and services providers shall be limited to the regulation and control of home medical equipment sold pursuant to a medical order; and
2. Nothing contained in Sections 1 to 12 of this Act shall be construed as authorizing the board to promulgate any administrative regulations relating to prices or fees or to advertising or the promotion of the sales or use of commodities or services;

- 1 (b) Issue subpoenas, schedule and conduct hearings, or appoint hearing
2 officers to schedule and conduct hearings on behalf of the board on any
3 matter under the jurisdiction of the board;
- 4 (c) Issue and renew all licenses for home medical equipment and services
5 providers;
- 6 (d) Investigate all complaints or violations of the home medical equipment laws
7 and the administrative regulations promulgated by the board;
- 8 (e) Perform all other functions necessary to carry out applicable provisions of
9 law and the administrative regulations promulgated by the board, relating
10 to manufacturers and wholesale distributors of home medical equipment
11 and home medical equipment and services providers;
- 12 (f) Assess reasonable fees, in addition to the fees specifically provided for in
13 Sections 1 to 12 of this Act consistent with KRS 61.870 to 61.884, for
14 services rendered to perform its duties and responsibilities, including but
15 not limited to the following:
- 16 1. Issuance of duplicate licenses;
17 2. Mailing lists or reports of data maintained by the board;
18 3. Making copies of documents; or
19 4. Providing notices of meetings;
- 20 (g) Seize any item of home medical equipment found by the board to constitute
21 an imminent danger to the public health and welfare; and
- 22 (h) Oversee and administer the licensure of home medical equipment and
23 services providers pursuant to Sections 1 to 12 of this Act.
- 24 (2) In addition to the sanctions provided in Section 8 of this Act, the board or its
25 hearing officer shall direct any licensee found guilty of a charge involving a
26 violation of home medical equipment laws, rules, or administrative regulations of
27 the state, any other state, or federal government, to pay to the board a sum not to

exceed the reasonable costs of investigation and prosecution of the case, not to exceed twenty-five thousand dollars (\$25,000).

(3) In an action for recovery of costs, proof of the board's order shall be conclusive proof of the validity of the order of payment and any terms for payment.

➔Section 10. KRS 315.524 is repealed, reenacted as a new section of KRS Chapter 309, and amended to read as follows:

(1) A person who engages in the business of providing home medical equipment and services and who is required to be licensed under Section 5 or 7 of this Act~~[KRS 315.510 to 315.524]~~ and who knowingly provides home medical equipment and services without a license issued by the board~~[under this chapter]~~ commits a Class A misdemeanor.

(2) Each day a violation of this section continues constitutes a separate offense.

➔SECTION 11. A NEW SECTION OF KRS CHAPTER 309 IS CREATED TO READ AS FOLLOWS:

(1) There is hereby created the Kentucky Board of Durable Medical Equipment Suppliers that shall be attached for administrative purposes to the Office of Occupations and Professions in the Public Protection Cabinet. The board shall consist of five (5) members, each appointed by the Governor. Four (4) members shall be appointed from a list of three (3) names for each position submitted by the Kentucky Medical Equipment Suppliers Association. One (1) member shall be a citizen at large who is not associated with or financially interested in the practice or business regulated. Any vacancy shall be filled for the unexpired term by the Governor, as provided in the original appointment.

(2) To be eligible for appointment as a member of the board, a person shall be at least twenty-one (21) years of age, of good moral character, a resident of this state, and a licensed durable medical equipment services provider in this state for at least three (3) consecutive years next preceding the date of his or her

1 appointment.

2 (3) The terms of office of each member shall be four (4) years, or until a successor is
 3 appointed and qualified.

4 (4) The board shall elect one (1) of its members as president and another of its
 5 members as secretary. The secretary may, subject to approval by the board,
 6 employ and fix the compensation of all personnel required for the administration
 7 of Sections 1 to 12 of this Act. The board may make all rules and regulations, not
 8 inconsistent with Sections 1 to 12 of this Act, as may be necessary to implement
 9 and carry out the provisions and purposes of Sections 1 to 12 of this Act.

10 (5) The board shall hold meetings at least twice a year and as frequently as it deems
 11 necessary at a time and place within the Commonwealth as the board may
 12 designate. A majority of the members shall constitute a quorum.

13 (6) The board may sue and be sued in its own name.

14 (7) Members of the board shall be immune from suit in any civil or criminal action
 15 which is based upon any official act or acts performed by them in good faith as
 16 members of the board.

17 (8) Members of the board shall receive no compensation for their services, but shall
 18 be paid for actual travel and other expenses incurred in connection with the
 19 performance of their duties and the business of the board.

20 (9) The board may utilize any materials, services, or facilities as may be made
 21 available to it by other state agencies or may contract therefor, to the extent as the
 22 board in its discretion may determine.

23 ➔ SECTION 12. A NEW SECTION OF KRS CHAPTER 309 IS CREATED TO
 24 READ AS FOLLOWS:

25 (1) All fees and other moneys received by the board pursuant to Sections 1 to 12 of
 26 this Act shall be deposited in the State Treasury to the credit of a revolving fund
 27 which is hereby established. Amounts in the fund shall be used for the purposes

1 set forth in Sections 1 to 12 of this Act.

2 (2) Notwithstanding KRS 45.229, any moneys remaining in the fund at the close of
 3 the fiscal year shall not lapse but shall be carried forward to the next fiscal year
 4 to be used by the board for the purposes set forth in Sections 1 to 12 of this Act.

5 (3) Any interest earnings of the fund shall become part of the fund and shall not
 6 lapse.

7 (4) The expenses of the board shall be paid from this revolving fund.

8 (5) Moneys deposited in the fund shall be used and are hereby appropriated for the
 9 purposes specified in Sections 1 to 12 of this Act.

10 ➔ Section 13. KRS 315.121 is amended to read as follows:

11 (1) The board may refuse to issue or renew a license, permit, or certificate to, or may
 12 suspend, temporarily suspend, revoke, fine, place on probation, reprimand,
 13 reasonably restrict, or take any combination of these actions against any licensee,
 14 permit holder, or certificate holder for the following reasons:

15 (a) Unprofessional or unethical conduct;

16 (b) Mental or physical incapacity that prevents the licensee, permit holder, or
 17 certificate holder from engaging or assisting in the practice of pharmacy or,
 18 the wholesale distribution or manufacturing of drugs, ~~or the provision of~~
 19 ~~home medical equipment and services~~ with reasonable skill, competence, and
 20 safety to the public;

21 (c) Being convicted of, or entering an "Alford" plea or plea of nolo contendere to,
 22 irrespective of an order granting probation or suspending imposition of any
 23 sentence imposed following the conviction or entry of such plea, one (1) or
 24 more or the following:

25 1. A felony;

26 2. An act involving moral turpitude or gross immorality; or

27 3. A violation of the pharmacy, drug, ~~or home medical equipment~~ laws,

- 1 rules, or administrative regulations of this state, any other state, or the
 2 federal government;
- 3 (d) Knowing or having reason to know that a pharmacist, pharmacist intern, or
 4 pharmacy technician~~[-, or home medical equipment and services provider]~~ is
 5 incapable of engaging or assisting in the practice of pharmacy~~[- or providing~~
 6 ~~home medical equipment and services]~~ with reasonable skill, competence, and
 7 safety to the public and failing to report any relevant information to the board;
- 8 (e) Knowingly making or causing to be made any false, fraudulent, or forged
 9 statement or misrepresentation of a material fact in securing issuance or
 10 renewal of a license, permit, or certificate;
- 11 (f) Engaging in fraud in connection with the practice of pharmacy or~~[-]~~ the
 12 wholesale distribution or manufacturing of drugs~~[-, or the provision of home~~
 13 ~~medical equipment and services]~~;
- 14 (g) Engaging in or aiding and abetting an individual to engage or assist in the
 15 practice of pharmacy~~[- or the provision of home medical equipment and~~
 16 ~~services]~~ without a license or falsely using the title of "pharmacist,"
 17 "pharmacist intern," "pharmacy technician,"~~["home medical equipment and~~
 18 ~~services provider," "provider,"]~~ or other term which might imply that the
 19 individual is a pharmacist, pharmacist intern, or pharmacy technician~~[- or~~
 20 ~~home medical equipment and services provider]~~;
- 21 (h) Being found by the board to be in violation of any provision of this chapter,
 22 KRS Chapter 217, KRS Chapter 218A, or the administrative regulations
 23 promulgated pursuant to these chapters;
- 24 (i) Violation of any order issued by the board to comply with any applicable law
 25 or administrative regulation;
- 26 (j) Knowing or having reason to know that a pharmacist, pharmacist intern, or
 27 pharmacy technician has engaged in or aided and abetted the unlawful

1 distribution of legend medications, and failing to report any relevant
 2 information to the board; or

3 (k) Failure to notify the board within fourteen (14) days of a change in one's home
 4 address.

5 (2) Unprofessional or unethical conduct includes but is not limited to the following acts
 6 of a pharmacist, pharmacist intern, or pharmacy technician:

7 (a) Publication or circulation of false, misleading, or deceptive statements
 8 concerning the practice of pharmacy;

9 (b) Divulging or revealing to unauthorized persons patient information or the
 10 nature of professional services rendered without the patient's express consent
 11 or without order or direction of a court. In addition to members, inspectors, or
 12 agents of the board, the following are considered authorized persons:

13 1. The patient, patient's agent, or another pharmacist acting on behalf of the
 14 patient;

15 2. Certified or licensed health-care personnel who are responsible for care
 16 of the patient;

17 3. Designated agents of the Cabinet for Health and Family Services for the
 18 purposes of enforcing the provisions of KRS Chapter 218A;

19 4. Any federal, state, or municipal officer whose duty is to enforce the laws
 20 of this state or the United States relating to drugs and who is engaged in
 21 a specific investigation involving a designated person; or

22 5. An agency of government charged with the responsibility of providing
 23 medical care for the patient, upon written request by an authorized
 24 representative of the agency requesting such information;

25 (c) Selling, transferring, or otherwise disposing of accessories, chemicals, drugs,
 26 or devices found in illegal traffic when the pharmacist, pharmacy intern, or
 27 pharmacy technician knows or should have known of their intended use in

- 1 illegal activities;
- 2 (d) Engaging in conduct likely to deceive, defraud, or harm the public,
- 3 demonstrating a willful or careless disregard for the health, welfare, or safety
- 4 of a patient, or engaging in conduct which substantially departs from accepted
- 5 standards of pharmacy practice ordinarily exercised by a pharmacist or
- 6 pharmacy intern, with or without established proof of actual injury;
- 7 (e) Engaging in grossly negligent professional conduct, with or without
- 8 established proof of actual injury;
- 9 (f) Except as provided in KRS 315.500, selling, transferring, dispensing,
- 10 ingesting, or administering a drug for which a prescription drug order is
- 11 required, without having first received a prescription drug order for the drug;
- 12 (g) Willfully or knowingly failing to maintain complete and accurate records of
- 13 all drugs received, dispensed, or disposed of in compliance with federal and
- 14 state laws, rules, or administrative regulations;
- 15 (h) Obtaining any remuneration by fraud, misrepresentation, or deception;
- 16 (i) Accessing or attempting to access confidential patient information for persons
- 17 other than those with whom a pharmacist has a current pharmacist-patient
- 18 relationship and where such information is necessary to the pharmacist to
- 19 provide pharmacy care; or
- 20 (j) Failing to exercise appropriate professional judgment in determining whether
- 21 a prescription drug order is lawful.
- 22 (3) ~~[Unprofessional or unethical conduct includes but is not limited to the following~~
- 23 ~~acts of a home medical equipment and services provider:~~
- 24 ~~(a) Engaging in conduct likely to deceive, defraud, or harm the public,~~
- 25 ~~demonstrating a willful or careless disregard for the health, welfare, or safety~~
- 26 ~~of a sick or disabled person, or engaging in conduct which substantially~~
- 27 ~~departs from accepted standards of providing home medical equipment and~~

1 ~~services ordinarily exercised by a home medical equipment and services~~
 2 ~~provider, with or without established proof of actual injury;~~

3 ~~(b) Engaging in grossly negligent professional conduct, with or without~~
 4 ~~established proof of actual injury;~~

5 ~~(c) Obtaining any remuneration by fraud, misrepresentation, or deception;~~

6 ~~(d) Providing home medical equipment and services that carry a legend or require~~
 7 ~~a prescription without a medical order from a licensed health care practitioner;~~

8 ~~or~~

9 ~~(e) Willfully or knowingly failing to maintain complete and accurate records of~~
 10 ~~home medical equipment and services provided in compliance with federal~~
 11 ~~and state laws, rules, or administrative regulations.~~

12 ~~(4)~~ Any licensee, permit holder, or certificate holder entering an "Alford" plea,
 13 pleading nolo contendere, or who is found guilty of a violation prescribed in
 14 subsection (1)(c) of this section shall within thirty (30) days notify the board of that
 15 plea or conviction. Failure to do so shall be grounds for suspension or revocation of
 16 the license, certificate, or permit.

17 ~~(4)~~~~(5)~~ Any person whose license, permit, or certificate has been revoked in
 18 accordance with the provisions of this section, may petition the board for
 19 reinstatement. The petition shall be made in writing and in a form prescribed by the
 20 board. The board shall investigate all reinstatement petitions, and the board may
 21 reinstate a license, permit, or certificate upon showing that the former holder has
 22 been rehabilitated and is again able to engage in the practice of pharmacy ~~or to~~
 23 ~~provide home medical equipment and services~~ with reasonable skill, competency,
 24 and safety to the public. Reinstatement may be on the terms and conditions that the
 25 board, based on competent evidence, reasonably believes necessary to protect the
 26 health and welfare of the citizens of the Commonwealth.

27 ~~(5)~~~~(6)~~ Upon exercising the power of revocation provided for in subsection (1) of this

1 section, the board may reasonably prohibit any petition for reinstatement for a
2 period up to and including five (5) years.

3 ~~(6)~~~~(7)~~ Any licensee, permit holder, or certificate holder who is disciplined under this
4 section for a minor violation may request in writing that the board expunge the
5 minor violation from the licensee's, permit holder's, or certificate holder's
6 permanent record.

7 (a) The request for expungement may be filed no sooner than three (3) years after
8 the date on which the licensee, permit holder, or certificate holder has
9 completed disciplinary sanctions imposed and if the licensee, permit holder, or
10 certificate holder has not been disciplined for any subsequent violation of the
11 same nature within this period of time.

12 (b) No person may have his or her record expunged under this section more than
13 once.

14 The board shall promulgate administrative regulations under KRS Chapter 13A to
15 establish violations which are minor violations under this subsection. A violation
16 shall be deemed a minor violation if it does not demonstrate a serious inability to
17 practice the profession; assist in the practice of pharmacy; provide home medical
18 equipment and services; adversely affect the public health, safety, or welfare; or
19 result in economic or physical harm to a person; or create a significant threat of
20 such harm.

21 ➔Section 14. KRS 315.191 is amended to read as follows:

22 (1) The board is authorized to:

23 (a) Promulgate administrative regulations pursuant to KRS Chapter 13A
24 necessary to regulate and control all matters set forth in this chapter relating to
25 pharmacists, pharmacist interns, pharmacy technicians, pharmacies, wholesale
26 distributors, and manufacturers~~], and home medical equipment and services~~
27 ~~providers]~~, to the extent that regulation and control of same have not been

1 delegated to some other agency of the Commonwealth, but administrative
 2 regulations relating to drugs~~[and home medical equipment and services]~~ shall
 3 be limited to the regulation and control of drugs sold pursuant to a
 4 prescription drug order~~[or home medical equipment sold pursuant to a~~
 5 ~~medical order]~~. However, nothing contained in this chapter shall be construed
 6 as authorizing the board to promulgate any administrative regulations relating
 7 to prices or fees or to advertising or the promotion of the sales or use of
 8 commodities or services;

9 (b) Issue subpoenas, schedule and conduct hearings, or appoint hearing officers to
 10 schedule and conduct hearings on behalf of the board on any matter under the
 11 jurisdiction of the board;

12 (c) Prescribe the time, place, method, manner, scope, and subjects of
 13 examinations, with at least two (2) examinations to be held annually;

14 (d) Issue and renew all licenses~~[-~~:

15 1. ~~Licenses for home medical equipment and services providers engaged in~~
 16 ~~providing home medical equipment and services; and~~

17 2. ~~Licenses]~~, certificates, and permits for all pharmacists, pharmacist
 18 interns, pharmacies, pharmacy technicians, wholesale distributors, and
 19 manufacturers engaged in the manufacture, distribution, or dispensation
 20 of drugs;

21 (e) Investigate all complaints or violations of the state pharmacy~~[and home~~
 22 ~~medical equipment]~~ laws and the administrative regulations promulgated by
 23 the board, and bring all these cases to the notice of the proper law enforcement
 24 authorities;

25 (f) Promulgate administrative regulations, pursuant to KRS Chapter 13A, that are
 26 necessary and to control the storage, retrieval, dispensing, refilling, and
 27 transfer of prescription drug orders within and between pharmacists and

- 1 pharmacies licensed or issued a permit by it;
- 2 (g) Perform all other functions necessary to carry out the provisions of law and
- 3 the administrative regulations promulgated by the board relating to
- 4 pharmacists, pharmacist interns, pharmacy technicians, pharmacies, wholesale
- 5 distributors, and manufacturers~~[-, and home medical equipment and services~~
- 6 ~~providers]~~;
- 7 (h) Establish or approve programs for training, qualifications, and registration of
- 8 pharmacist interns;
- 9 (i) Assess reasonable fees, in addition to the fees specifically provided for in this
- 10 chapter and consistent with KRS 61.870 to 61.884, for services rendered to
- 11 perform its duties and responsibilities, including, but not limited to, the
- 12 following:
- 13 1. Issuance of duplicate certificates;
 - 14 2. Mailing lists or reports of data maintained by the board;
 - 15 3. Copies of documents; or
 - 16 4. Notices of meetings;
- 17 (j) Seize any drug or device found by the board to constitute an imminent danger
- 18 to public health and welfare;
- 19 (k) Establish an advisory council to advise the board on administrative regulations
- 20 and other matters, within the discretion of the board, pertinent to the
- 21 regulation of pharmacists, pharmacist interns, pharmacy technicians,
- 22 pharmacies, drug distribution, and drug manufacturing~~[-, and home medical~~
- 23 ~~equipment and services]~~. The council shall consist of nine (9) members
- 24 selected by the board for terms of up to four (4) years. No member shall serve
- 25 on the council for more than eight (8) years. Membership of the council shall
- 26 include nine (9)~~[seven (7)]~~ individuals broadly representative of the
- 27 profession of pharmacy and the general public~~[-, and two (2) individuals~~

1 ~~representative of the home medical equipment and services profession~~
 2 ~~licensed in accordance with KRS 315.518~~. Members shall be selected by the
 3 board from a list of qualified candidates submitted by the association, society,
 4 or other interested parties; and

5 (l) Promulgate administrative regulations establishing the qualifications that
 6 pharmacy technicians are required to attain prior to engaging in pharmacy
 7 practice activities outside the immediate supervision of a pharmacist~~}; and~~
 8 ~~(m) Oversee and administer the licensure of home medical equipment and services~~
 9 ~~providers pursuant to KRS 315.510 to 315.524~~].

10 (2) The board shall have other authority as may be necessary to enforce pharmacy~~}; and~~
 11 ~~home medical equipment~~ laws and administrative regulations of the board
 12 including, but not limited to:

13 (a) Joining or participating in professional organizations and associations
 14 organized exclusively to promote improvement of the standards of practice of
 15 pharmacy~~}; and of providing home medical equipment and services~~ for the
 16 protection of public health and welfare or facilitate the activities of the board;
 17 and

18 (b) Receiving and expending funds, in addition to its biennial appropriation,
 19 received from parties other than the state, if:

- 20 1. The funds are awarded for the pursuit of a specific objective which the
- 21 board is authorized to enforce through this chapter, or which the board is
- 22 qualified to pursue by reason of its jurisdiction or professional expertise;
- 23 2. The funds are expended for the objective for which they were awarded;
- 24 3. The activities connected with or occasioned by the expenditure of the
- 25 funds do not interfere with the performance of the board's
- 26 responsibilities and do not conflict with the exercise of its statutory
- 27 powers;

1 4. The funds are kept in a separate account and not commingled with funds
2 received from the state; and

3 5. Periodic accountings of the funds are maintained at the board office for
4 inspection or review.

5 (3) In addition to the sanctions provided in KRS 315.121, the board or its hearing
6 officer may direct any licensee, permit holder, or certificate holder found guilty of a
7 charge involving~~[- home medical equipment,]~~ pharmacy, or drug laws, rules, or
8 administrative regulations of the state, any other state, or federal government, to pay
9 to the board a sum not to exceed the reasonable costs of investigation and
10 prosecution of the case, not to exceed twenty-five thousand dollars (\$25,000).

11 (4) In an action for recovery of costs, proof of the board's order shall be conclusive
12 proof of the validity of the order of payment and any terms for payment.

13 ➔Section 15. KRS 315.125 is amended to read as follows:

14 (1) When the board has probable cause to believe a pharmacist, pharmacy technician,
15 licensee, certificate holder, or permit holder is suffering from a mental or physical
16 condition that might impede that person's ability to practice competently, the board
17 may order the individual to undergo a mental or physical examination by an
18 appropriately-trained professional designated by the board.

19 (2) Failure of a pharmacist, pharmacy technician, licensee, or permit holder to submit to
20 such an examination when directed, unless the failure was due to circumstances
21 beyond his or her control, shall constitute an admission that he or she has developed
22 such a mental or physical disability, or other condition, that continued practice is
23 dangerous to patients or to the public. Failure to attend the examination shall
24 constitute a default, and a final order suspending, limiting, restricting, or revoking
25 the license or permit may be entered without the taking of testimony or presentation
26 of evidence.

27 (3) A pharmacist, pharmacy technician, licensee, or permit holder whose license has

1 been suspended, limited, restricted, or revoked pursuant to this section shall at
 2 reasonable intervals be afforded an opportunity, pursuant to KRS 315.121~~(4)~~⁽⁵⁾,
 3 to demonstrate that he can resume the competent practice of pharmacy~~[- or the~~
 4 ~~provision of home medical equipment or services]~~ with reasonable skill and safety
 5 to patients.

6 ➔ Section 16. KRS 315.005 is amended to read as follows:

7 The purpose of this chapter is to promote, preserve, and protect public health, safety, and
 8 welfare by and through effective control and regulation of the practice of pharmacy; the
 9 licensure of pharmacists; the licensure, control, and regulation of all sites or persons who
 10 are required to obtain a license, certificate, or permit from the Board of Pharmacy,
 11 whether located in or outside the Commonwealth, that distribute, manufacture, or sell
 12 drugs~~[- or provide home medical equipment and services]~~ within the Commonwealth.

13 ➔ Section 17. KRS 304.17A-005 is amended to read as follows:

14 As used in this subtitle, unless the context requires otherwise:

- 15 (1) "Association" means an entity, other than an employer-organized association, that
 16 has been organized and is maintained in good faith for purposes other than that of
 17 obtaining insurance for its members and that has a constitution and bylaws;
- 18 (2) "At the time of enrollment" means:
 19 (a) At the time of application for an individual, an association that actively
 20 markets to individual members, and an employer-organized association that
 21 actively markets to individual members; and
 22 (b) During the time of open enrollment or during an insured's initial or special
 23 enrollment periods for group health insurance;
- 24 (3) "Base premium rate" means, for each class of business as to a rating period, the
 25 lowest premium rate charged or that could have been charged under the rating
 26 system for that class of business by the insurer to the individual or small group, or
 27 employer as defined in KRS 304.17A-0954, with similar case characteristics for

1 health benefit plans with the same or similar coverage;

2 (4) "Basic health benefit plan" means any plan offered to an individual, a small group,
3 or employer-organized association that limits coverage to physician, pharmacy,
4 home health, preventive, emergency, and inpatient and outpatient hospital services
5 in accordance with the requirements of this subtitle. If vision or eye services are
6 offered, these services may be provided by an ophthalmologist or optometrist.
7 Chiropractic benefits may be offered by providers licensed pursuant to KRS
8 Chapter 312;

9 (5) "Bona fide association" means an entity as defined in 42 U.S.C. sec. 300gg-
10 91(d)(3);

11 (6) "Church plan" means a church plan as defined in 29 U.S.C. sec. 1002(33);

12 (7) "COBRA" means any of the following:

13 (a) 26 U.S.C. sec. 4980B other than subsection (f)(1) as it relates to pediatric
14 vaccines;

15 (b) The Employee Retirement Income Security Act of 1974 (29 U.S.C. sec. 1161
16 et seq. other than sec. 1169); or

17 (c) 42 U.S.C. sec. 300bb;

18 (8) (a) "Creditable coverage" means, with respect to an individual, coverage of the
19 individual under any of the following:

20 1. A group health plan;

21 2. Health insurance coverage;

22 3. Part A or Part B of Title XVIII of the Social Security Act;

23 4. Title XIX of the Social Security Act, other than coverage consisting
24 solely of benefits under section 1928;

25 5. Chapter 55 of Title 10, United States Code, including medical and dental
26 care for members and certain former members of the uniformed services,
27 and for their dependents; for purposes of Chapter 55 of Title 10, United

1 States Code, "uniformed services" means the Armed Forces and the
 2 Commissioned Corps of the National Oceanic and Atmospheric
 3 Administration and of the Public Health Service;

4 6. A medical care program of the Indian Health Service or of a tribal
 5 organization;

6 7. A state health benefits risk pool;

7 8. A health plan offered under Chapter 89 of Title 5, United States Code,
 8 such as the Federal Employees Health Benefit Program;

9 9. A public health plan as established or maintained by a state, the United
 10 States government, a foreign country, or any political subdivision of a
 11 state, the United States government, or a foreign country that provides
 12 health coverage to individuals who are enrolled in the plan;

13 10. A health benefit plan under section 5(e) of the Peace Corps Act (22
 14 U.S.C. sec. 2504(e)); or

15 11. Title XXI of the Social Security Act, such as the State Children's Health
 16 Insurance Program.

17 (b) This term does not include coverage consisting solely of coverage of excepted
 18 benefits as defined in subsection (14) of this section;

19 (9) "Dependent" means any individual who is or may become eligible for coverage
 20 under the terms of an individual or group health benefit plan because of a
 21 relationship to a participant;

22 (10) "Employee benefit plan" means an employee welfare benefit plan or an employee
 23 pension benefit plan or a plan which is both an employee welfare benefit plan and
 24 an employee pension benefit plan as defined by ERISA;

25 (11) "Eligible individual" means an individual:

26 (a) For whom, as of the date on which the individual seeks coverage, the
 27 aggregate of the periods of creditable coverage is eighteen (18) or more

1 months and whose most recent prior creditable coverage was under a group
 2 health plan, governmental plan, or church plan. A period of creditable
 3 coverage under this paragraph shall not be counted if, after that period, there
 4 was a sixty-three (63) day period of time, excluding any waiting or affiliation
 5 period, during all of which the individual was not covered under any
 6 creditable coverage;

7 (b) Who is not eligible for coverage under a group health plan, Part A or Part B of
 8 Title XVIII of the Social Security Act (42 U.S.C. secs. 1395j et seq.), or a
 9 state plan under Title XIX of the Social Security Act (42 U.S.C. secs. 1396 et
 10 seq.) and does not have other health insurance coverage;

11 (c) With respect to whom the most recent coverage within the coverage period
 12 described in paragraph (a) of this subsection was not terminated based on a
 13 factor described in KRS 304.17A-240(2)(a), (b), and (c);

14 (d) If the individual had been offered the option of continuation coverage under a
 15 COBRA continuation provision or under KRS 304.18-110, who elected the
 16 coverage; and

17 (e) Who, if the individual elected the continuation coverage, has exhausted the
 18 continuation coverage under the provision or program;

19 (12) "Employer-organized association" means any of the following:

20 (a) Any entity that was qualified by the commissioner as an eligible association
 21 prior to April 10, 1998, and that has actively marketed a health insurance
 22 program to its members since September 8, 1996, and which is not insurer-
 23 controlled;

24 (b) Any entity organized under KRS 247.240 to 247.370 that has actively
 25 marketed health insurance to its members and that is not insurer-controlled; or

26 (c) Any entity that is a bona fide association as defined in 42 U.S.C. sec. 300gg-
 27 91(d)(3), whose members consist principally of employers, and for which the

entity's health insurance decisions are made by a board or committee, the majority of which are representatives of employer members of the entity who obtain group health insurance coverage through the entity or through a trust or other mechanism established by the entity, and whose health insurance decisions are reflected in written minutes or other written documentation.

Except as provided in KRS 304.17A-200, 304.17A.210, and 304.17A-220, and except as otherwise provided by the definition of "large group" contained in subsection (30) of this section, an employer-organized association shall not be treated as an association, small group, or large group under this subtitle, provided that an employer-organized association that is a bona fide association as defined in subsection (5) of this section shall be treated as a large group under this subtitle;

(13) "Employer-organized association health insurance plan" means any health insurance plan, policy, or contract issued to an employer-organized association, or to a trust established by one (1) or more employer-organized associations, or providing coverage solely for the employees, retired employees, directors and their spouses and dependents of the members of one (1) or more employer-organized associations;

(14) "Excepted benefits" means benefits under one (1) or more, or any combination thereof, of the following:

- (a) Coverage only for accident, including accidental death and dismemberment, or disability income insurance, or any combination thereof;
- (b) Coverage issued as a supplement to liability insurance;
- (c) Liability insurance, including general liability insurance and automobile liability insurance;
- (d) Workers' compensation or similar insurance;
- (e) Automobile medical payment insurance;
- (f) Credit-only insurance;

- 1 (g) Coverage for on-site medical clinics;
- 2 (h) Other similar insurance coverage, specified in administrative regulations,
- 3 under which benefits for medical care are secondary or incidental to other
- 4 insurance benefits;
- 5 (i) Limited scope dental or vision benefits;
- 6 (j) Benefits for long-term care, nursing home care, home health care, community-
- 7 based care, or any combination thereof;
- 8 (k) Such other similar, limited benefits as are specified in administrative
- 9 regulations;
- 10 (l) Coverage only for a specified disease or illness;
- 11 (m) Hospital indemnity or other fixed indemnity insurance;
- 12 (n) Benefits offered as Medicare supplemental health insurance, as defined under
- 13 section 1882(g)(1) of the Social Security Act;
- 14 (o) Coverage supplemental to the coverage provided under Chapter 55 of Title 10,
- 15 United States Code;
- 16 (p) Coverage similar to that in paragraphs (n) and (o) of this subsection that is
- 17 supplemental to coverage under a group health plan; and
- 18 (q) Health flexible spending arrangements;
- 19 (15) "Governmental plan" means a governmental plan as defined in 29 U.S.C. sec.
- 20 1002(32);
- 21 (16) "Group health plan" means a plan, including a self-insured plan, of or contributed to
- 22 by an employer, including a self-employed person, or employee organization, to
- 23 provide health care directly or otherwise to the employees, former employees, the
- 24 employer, or others associated or formerly associated with the employer in a
- 25 business relationship, or their families;
- 26 (17) "Guaranteed acceptance program participating insurer" means an insurer that is
- 27 required to or has agreed to offer health benefit plans in the individual market to

1 guaranteed acceptance program qualified individuals under KRS 304.17A-400 to
2 304.17A-480;

3 (18) "Guaranteed acceptance program plan" means a health benefit plan in the individual
4 market issued by an insurer that provides health benefits to a guaranteed acceptance
5 program qualified individual and is eligible for assessment and refunds under the
6 guaranteed acceptance program under KRS 304.17A-400 to 304.17A-480;

7 (19) "Guaranteed acceptance program" means the Kentucky Guaranteed Acceptance
8 Program established and operated under KRS 304.17A-400 to 304.17A-480;

9 (20) "Guaranteed acceptance program qualified individual" means an individual who, on
10 or before December 31, 2000:

11 (a) Is not an eligible individual;

12 (b) Is not eligible for or covered by other health benefit plan coverage or who is a
13 spouse or a dependent of an individual who:

14 1. Waived coverage under KRS 304.17A-210(2); or

15 2. Did not elect family coverage that was available through the association
16 or group market;

17 (c) Within the previous three (3) years has been diagnosed with or treated for a
18 high-cost condition or has had benefits paid under a health benefit plan for a
19 high-cost condition, or is a high risk individual as defined by the underwriting
20 criteria applied by an insurer under the alternative underwriting mechanism
21 established in KRS 304.17A-430(3);

22 (d) Has been a resident of Kentucky for at least twelve (12) months immediately
23 preceding the effective date of the policy; and

24 (e) Has not had his or her most recent coverage under any health benefit plan
25 terminated or nonrenewed because of any of the following:

26 1. The individual failed to pay premiums or contributions in accordance
27 with the terms of the plan or the insurer had not received timely

1 premium payments;

2 2. The individual performed an act or practice that constitutes fraud or
3 made an intentional misrepresentation of material fact under the terms of
4 the coverage; or

5 3. The individual engaged in intentional and abusive noncompliance with
6 health benefit plan provisions;

7 (21) "Guaranteed acceptance plan supporting insurer" means either an insurer, on or
8 before December 31, 2000, that is not a guaranteed acceptance plan participating
9 insurer or is a stop loss carrier, on or before December 31, 2000, provided that a
10 guaranteed acceptance plan supporting insurer shall not include an employer-
11 sponsored self-insured health benefit plan exempted by ERISA;

12 (22) "Health benefit plan" means any hospital or medical expense policy or certificate;
13 nonprofit hospital, medical-surgical, and health service corporation contract or
14 certificate; provider sponsored integrated health delivery network; a self-insured
15 plan or a plan provided by a multiple employer welfare arrangement, to the extent
16 permitted by ERISA; health maintenance organization contract; or any health
17 benefit plan that affects the rights of a Kentucky insured and bears a reasonable
18 relation to Kentucky, whether delivered or issued for delivery in Kentucky, and
19 does not include policies covering only accident, credit, dental, disability income,
20 fixed indemnity medical expense reimbursement policy, long-term care, Medicare
21 supplement, specified disease, vision care, coverage issued as a supplement to
22 liability insurance, insurance arising out of a workers' compensation or similar law,
23 automobile medical-payment insurance, insurance under which benefits are payable
24 with or without regard to fault and that is statutorily required to be contained in any
25 liability insurance policy or equivalent self-insurance, short-term coverage, student
26 health insurance offered by a Kentucky-licensed insurer under written contract with
27 a university or college whose students it proposes to insure, medical expense

1 reimbursement policies specifically designed to fill gaps in primary coverage,
 2 coinsurance, or deductibles and provided under a separate policy, certificate, or
 3 contract, or coverage supplemental to the coverage provided under Chapter 55 of
 4 Title 10, United States Code, or limited health service benefit plans;

5 (23) "Health care provider" or "provider" means any facility or service required to be
 6 licensed pursuant to KRS Chapter 216B, a pharmacist *as defined pursuant to KRS*
 7 *Chapter 315*, or home medical equipment and services provider as defined pursuant
 8 to *Section 2 of this Act* ~~[KRS Chapter 315]~~, and any of the following independent
 9 practicing practitioners:

- 10 (a) Physicians, osteopaths, and podiatrists licensed under KRS Chapter 311;
- 11 (b) Chiropractors licensed under KRS Chapter 312;
- 12 (c) Dentists licensed under KRS Chapter 313;
- 13 (d) Optometrists licensed under KRS Chapter 320;
- 14 (e) Physician assistants regulated under KRS Chapter 311;
- 15 (f) Advanced practice registered nurses licensed under KRS Chapter 314; and
- 16 (g) Other health care practitioners as determined by the department by
 17 administrative regulations promulgated under KRS Chapter 13A;

18 (24) (a) "High-cost condition," pursuant to the Kentucky Guaranteed Acceptance
 19 Program, means a covered condition in an individual policy as listed in
 20 paragraph (c) of this subsection or as added by the commissioner in
 21 accordance with KRS 304.17A-280, but only to the extent that the condition
 22 exceeds the numerical score or rating established pursuant to uniform
 23 underwriting standards prescribed by the commissioner under paragraph (b) of
 24 this subsection that account for the severity of the condition and the cost
 25 associated with treating that condition.

- 26 (b) The commissioner by administrative regulation shall establish uniform
 27 underwriting standards and a score or rating above which a condition is

1 considered to be high-cost by using:

- 2 1. Codes in the most recent version of the "International Classification of
3 Diseases" that correspond to the medical conditions in paragraph (c) of
4 this subsection and the costs for administering treatment for the
5 conditions represented by those codes; and
- 6 2. The most recent version of the questionnaire incorporated in a national
7 underwriting guide generally accepted in the insurance industry as
8 designated by the commissioner, the scoring scale for which shall be
9 established by the commissioner.

10 (c) The diagnosed medical conditions are: acquired immune deficiency syndrome
11 (AIDS), angina pectoris, ascites, chemical dependency cirrhosis of the liver,
12 coronary insufficiency, coronary occlusion, cystic fibrosis, Friedreich's ataxia,
13 hemophilia, Hodgkin's disease, Huntington chorea, juvenile diabetes,
14 leukemia, metastatic cancer, motor or sensory aphasia, multiple sclerosis,
15 muscular dystrophy, myasthenia gravis, myotonia, open heart surgery,
16 Parkinson's disease, polycystic kidney, psychotic disorders, quadriplegia,
17 stroke, syringomyelia, and Wilson's disease;

18 (25) "Index rate" means, for each class of business as to a rating period, the arithmetic
19 average of the applicable base premium rate and the corresponding highest premium
20 rate;

21 (26) "Individual market" means the market for the health insurance coverage offered to
22 individuals other than in connection with a group health plan. The individual market
23 includes an association plan that is not employer related, issued to individuals on an
24 individually underwritten basis, other than an employer-organized association or a
25 bona fide association, that has been organized and is maintained in good faith for
26 purposes other than obtaining insurance for its members and that has a constitution
27 and bylaws;

- 1 (27) "Insurer" means any insurance company; health maintenance organization; self-
2 insurer or multiple employer welfare arrangement not exempt from state regulation
3 by ERISA; provider-sponsored integrated health delivery network; self-insured
4 employer-organized association, or nonprofit hospital, medical-surgical, dental, or
5 health service corporation authorized to transact health insurance business in
6 Kentucky;
- 7 (28) "Insurer-controlled" means that the commissioner has found, in an administrative
8 hearing called specifically for that purpose, that an insurer has or had a substantial
9 involvement in the organization or day-to-day operation of the entity for the
10 principal purpose of creating a device, arrangement, or scheme by which the insurer
11 segments employer groups according to their actual or anticipated health status or
12 actual or projected health insurance premiums;
- 13 (29) "Kentucky Access" has the meaning provided in KRS 304.17B-001(17);
- 14 (30) "Large group" means:
- 15 (a) An employer with fifty-one (51) or more employees;
- 16 (b) An affiliated group with fifty-one (51) or more eligible members; or
- 17 (c) An employer-organized association that is a bona fide association as defined
18 in subsection (5) of this section;
- 19 (31) "Managed care" means systems or techniques generally used by third-party payors
20 or their agents to affect access to and control payment for health care services and
21 that integrate the financing and delivery of appropriate health care services to
22 covered persons by arrangements with participating providers who are selected to
23 participate on the basis of explicit standards for furnishing a comprehensive set of
24 health care services and financial incentives for covered persons using the
25 participating providers and procedures provided for in the plan;
- 26 (32) "Market segment" means the portion of the market covering one (1) of the
27 following:

- 1 (a) Individual;
- 2 (b) Small group;
- 3 (c) Large group; or
- 4 (d) Association;
- 5 (33) "Participant" means any employee or former employee of an employer, or any
- 6 member or former member of an employee organization, who is or may become
- 7 eligible to receive a benefit of any type from an employee benefit plan which covers
- 8 employees of the employer or members of the organization, or whose beneficiaries
- 9 may be eligible to receive any benefit as established in Section 3(7) of ERISA;
- 10 (34) "Preventive services" means medical services for the early detection of disease that
- 11 are associated with substantial reduction in morbidity and mortality;
- 12 (35) "Provider network" means an affiliated group of varied health care providers that is
- 13 established to provide a continuum of health care services to individuals;
- 14 (36) "Provider-sponsored integrated health delivery network" means any provider-
- 15 sponsored integrated health delivery network created and qualified under KRS
- 16 304.17A-300 and KRS 304.17A-310;
- 17 (37) "Purchaser" means an individual, organization, employer, association, or the
- 18 Commonwealth that makes health benefit purchasing decisions on behalf of a group
- 19 of individuals;
- 20 (38) "Rating period" means the calendar period for which premium rates are in effect. A
- 21 rating period shall not be required to be a calendar year;
- 22 (39) "Restricted provider network" means a health benefit plan that conditions the
- 23 payment of benefits, in whole or in part, on the use of the providers that have
- 24 entered into a contractual arrangement with the insurer to provide health care
- 25 services to covered individuals;
- 26 (40) "Self-insured plan" means a group health insurance plan in which the sponsoring
- 27 organization assumes the financial risk of paying for covered services provided to

1 its enrollees;

2 (41) "Small employer" means, in connection with a group health plan with respect to a
3 calendar year and a plan year, an employer who employed an average of at least two
4 (2) but not more than fifty (50) employees on business days during the preceding
5 calendar year and who employs at least two (2) employees on the first day of the
6 plan year;

7 (42) "Small group" means:

- 8 (a) A small employer with two (2) to fifty (50) employees; or
- 9 (b) An affiliated group or association with two (2) to fifty (50) eligible members;

10 (43) "Standard benefit plan" means the plan identified in KRS 304.17A-250; and

11 (44) "Telehealth" has the meaning provided in KRS 311.550.

12 ➔Section 18. KRS 205.210 is amended to read as follows:

13 (1) The amount of public assistance to be granted shall be determined with due regard
14 to the needs and resources of the individual and family as prescribed by regulation,
15 provided, that if available funds during a budgetary period are insufficient to meet
16 the full needs of the recipients in all or any of the categories of public assistance, the
17 funds available shall be reasonably prorated to recipients in such categories
18 according to pending and anticipated applications during such budgetary period.

19 (2) Notwithstanding any other provisions of law to the contrary, resources in any given
20 case shall be deemed to include among other things:

21 (a) The income and any property belonging to any applicant or recipient; except
22 the exemptions of the kind and the amount of income prescribed by
23 regulations within the scope of the public assistance titles of the Social
24 Security Act, its amendments and other federal acts and regulations;

25 (b) The income and any property of the spouse living with any needy aged, needy
26 blind or needy permanently and totally disabled person; and

27 (c) Such income and resources as may be available to applicants or recipients

1 from persons legally liable for their support.

2 **The price brought on the sale of property at a public auction conducted by a**
 3 **licensed auctioneer shall be deemed to be the fair market value of that property.**

- 4 (3) The value of any property voluntarily transferred by any applicant or recipient or the
 5 spouse living with any applicant or recipient for the purpose of establishing
 6 eligibility for public assistance shall be deemed a resource of such applicant or
 7 recipient under this section.

8 ➔Section 19. KRS 205.540 is amended to read as follows:

- 9 (1) An Advisory Council for Medical Assistance shall be established in the state
 10 government. The council shall consist of **nineteen (19)**~~eighteen (18)~~ members.
 11 The secretary for health and family services shall be an ex officio member. The
 12 other **eighteen (18)**~~seventeen (17)~~ members of the council shall be appointed by
 13 the Governor and shall hold office for a term of four (4) years and until their
 14 successors are appointed and qualify, except that the members appointed to fill the
 15 first vacancy occurring for a term beginning on July 1, 1960, shall be as follows:
 16 Two (2) members shall be appointed for one (1) year, two (2) for two (2) years, two
 17 (2) for three (3) years, and three (3) for four (4) years, and the respective terms of
 18 the first members shall be designated by the Governor at the time of their
 19 appointments. Upon the expiration of the respective terms of the members first
 20 appointed, the term of each successor shall be for four (4) years and until his
 21 successor is appointed and qualified. Ten (10) of the appointments shall be made
 22 one (1) from each list of three (3) nominees submitted by the following
 23 organizations: the Kentucky State Medical Association; the Kentucky Dental
 24 Association; the Kentucky Hospital Association; **the Kentucky Medical Equipment**
 25 **Suppliers Association,** the Kentucky Pharmacists Association; the Kentucky
 26 Association of Health Care Facilities; the Kentucky Nurses' Association; the State
 27 Board of Podiatry; the Kentucky Home Health Association; the Kentucky

1 Optometric Association; and the Kentucky Association of Nonprofit Homes and
 2 Services for the Aging, Inc. The other seven (7) appointive members shall be
 3 health-care advocates knowledgeable about health care and the health-care industry,
 4 and shall include three (3) medical assistance recipients, one (1) representative of a
 5 recognized consumer advocacy group representing the elderly; and three (3)
 6 representatives of recognized consumer advocacy groups whose membership
 7 includes low-income persons, children and youth, women, minorities, and disabled
 8 persons.

9 (2) Each appointive member of the council shall serve without compensation but each
 10 council member not otherwise compensated for his time or expenses shall be
 11 entitled to reimbursement for his actual and necessary expenses in carrying out his
 12 duties with reimbursement for expenses being made in accordance with state
 13 regulations relating to travel reimbursement.

14 (3) Vacancies shall be filled for the unexpired term in the same manner as original
 15 appointments, maintaining representations as set out in subsection (1) of this
 16 section.

17 (4) The council shall elect a chairman, vice chairman, and secretary from among its
 18 members at its first regular meeting in each fiscal year and shall adopt rules
 19 governing its proceedings. The council shall hold a meeting at least once every three
 20 (3) months and such other special or regular meetings as may be desired.

21 (5) No consumer member of the council shall have a fiduciary relationship or interest in
 22 any health-care facility or service.

23 ➔Section 20. KRS 194A.707 is amended to read as follows:

24 (1) The Cabinet for Health and Family Services shall establish by the promulgation of
 25 administrative regulation under KRS Chapter 13A, an initial and annual
 26 certification review process for assisted-living communities. This administrative
 27 regulation shall establish procedures related to applying for, reviewing, and

1 approving, denying, or revoking certification, as well as the conduct of hearings
 2 upon appeals as governed by KRS Chapter 13B.

3 (2) An on-site visit of an assisted-living community shall be conducted by the cabinet:

4 (a) As part of the initial certification review process;

5 (b) On a biennial basis as part of the certification review process if during or since
 6 the previous certification review an assisted-living community has not
 7 received:

8 1. Any statement of danger, unless withdrawn by the cabinet; or

9 2. A finding substantiated by the cabinet that the assisted-living community
 10 delivered a health service; and

11 (c) Within one (1) year of the date of the previous certification review if during or
 12 since the last certification review an assisted-living community has received:

13 1. Any statement of danger that was not withdrawn by the cabinet; or

14 2. A finding substantiated by the cabinet that the assisted-living community
 15 delivered a health service.

16 (3) No business shall market its service as an assisted-living community unless it has:

17 (a) Filed a current application for the business to be certified by the department as
 18 an assisted-living community; or

19 (b) Received certification by the department as an assisted-living community.

20 (4) No business that has been denied or had its certification revoked shall operate or
 21 market its service as an assisted-living community unless it has:

22 (a) Filed a current application for the business to be certified by the department as
 23 an assisted-living community; and

24 (b) Received certification as an assisted-living community from the department.
 25 Revocation of certification may be grounds for the department to not reissue
 26 certification for one (1) year if ownership remains substantially the same.

27 (5) No business shall operate as an assisted-living community unless its owner or

1 manager has:

2 (a) Filed a current application for the business to be certified as an assisted-living
3 community by the department; and

4 (b) Received certification as an assisted-living community from the department.

5 (6) *By September 1 of each year, each assisted-living community certified pursuant*
6 *to this chapter may provide residents with educational information or education*
7 *opportunities on influenza disease.*

8 (7) The department shall determine the feasibility of recognizing accreditation by other
9 organizations in lieu of certification from the department.


10 (8){(7)} Individuals designated by the department to conduct certification reviews shall
11 have the skills, training, experience, and ongoing education to perform certification
12 reviews.

13 (9){(8)} Upon receipt of an application for certification, the department shall assess an
14 assisted-living community certification fee in the amount of twenty dollars (\$20)
15 per living unit that in the aggregate for each assisted-living community is no less
16 than three hundred dollars (\$300) and no more than one thousand six hundred
17 dollars (\$1,600). The department shall submit to the Legislative Research
18 Commission, by June 30 of each year, a breakdown of fees assessed and costs
19 incurred for conducting certification reviews.

20 (10){(9)} The department shall submit to the Legislative Research Commission and
21 make available to any interested person at no charge, by June 30 of each year, in
22 summary format, all findings from certification reviews conducted during the prior
23 twelve (12) months.

24 (11){(10)} Notwithstanding any provision of law to the contrary, the department may
25 request any additional information from an assisted-living community or conduct
26 additional on-site visits to ensure compliance with the provisions of KRS 194A.700
27 to 194A.729.

1 (12)~~[(11)]~~ Failure to follow an assisted-living community's policies, practices, and
2 procedures shall not result in a finding of noncompliance unless the assisted-living
3 community is out of compliance with a related requirement under KRS 194A.700 to
4 194A.729.



Speaker-House of Representatives



President of Senate

Attest: 

Chief Clerk of House of Representatives

Approved 

Governor

Date 13 APRIL 2016